IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Crl.Rev.Pet.No. 2803 of 2007()

CRA.685/2005 of ADDL. SESSIONS COURTS (ADHOC), MAVELIKKARA
CC.73/2003 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA

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REVN. PETITIONER:

SASIKALA SURENDRAN, POOVADIL VEEDU,
MANJADITHARA MURI, PALLICKAL P.O.,
BHARANIKAVU VILLAGE, MAVELIKARA TALUK.

BY ADV. SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENTS:

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1. K.DAMODARAN ,THURUTHIYIL PADEETTATHIL,
MANJADITHARA MURI, PALLICKAL P.O.,
BHARANICKAVU VILLAGE, MAVELIKARA TALUK.

2. STATE OF KERALA REPRESETNED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2803 OF 2007 A

Dated this the 14th day of August, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.73/2003 on the file of the J.F.C.M., Mavelikkara challenges the conviction entered and the sentence passed against her for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. The learned counsel for the revision petitioner contended that this is a case in which on the intrinsic worth of the evidence of PW1 itself the prosecution should fail. According to the learned counsel, PW1 has in unambiguous terms admitted, when cross examined, that the accused is Surendran(who is the husband of the complainant) with whom alone the accused had transaction and that the said Surendran had borrowed Rs.75,000/- (Rupees seventy five thousand only) and later Rs.80,000/- (Rupees eighty thousand only) and one cheque was issued for both the amounts.

4. It may be that the accused had transaction with Surendran. But the trial court which had a unique advantage of seeing the witnesses and assessing their credibility was inclined to accept the testimony of PW1 and with regard to that portion of his evidence the trial court observed that the complainant is an old man of 73 years and have filed two cases against the accused and her husband which were posted on the same day for trial and so PW1 was evidently making a mistake when he stated that the accused in this case was also Surendran. The lower appellate

court has also endorsed this observation of the trial court. But the said statement of PW1 does not in any way shake her evidence with regard to the borrowal of Rs.45,000/- (Rupees forty five thousand only) and execution of Ext.P1 cheque by the accused. Hence, it is futile for the revision petitioner to contend that the aforementioned evidence of PW1 has the effect of rebutting the statutory presumption under sections 118 and 139 of the Negotiable Instruments Act, 1881 or that there is no legally enforceable debt.

5. Equally misconceived is the contention that the court below before directing the payment of the cheque amount of Rs.45,000/- (Rupees forty five thousand only) as compensation should have conducted a summary enquiry as envisaged in ***Dilip S. Dahanukar Vs. Kotak Mahindra Company Limited and*** another [2007 (3) Supreme 379]. In the first place, the apex court was considering the legality of imposing a direction to pay the cheque amount while suspending the sentence under section 389 Cr.P.C. by the first appellate court in an appeal against the conviction. The revision petitioner when heard on the question of sentence had no case that she did not have the financial capacity

to pay the cheque amount which was the amount borrowed by him from the complainant. She had also no case that there were other pressing claims on her means so as to disable her from paying the cheque amount as compensation. Hence, the omission to conduct a summary enquiry does not in any way affect the sentence imposed on the revision petitioner. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided she complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.45,000/- (Rupees forty five thousand only) within two months from today,

then she need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, she shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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